



City Of Memphis

Collection of Ambulance Service Receivables

[Request for Proposal #2484](#)

**Prepared By: Fire Services
Closing Date for Proposals: June 18, 2010
Proposals Accepted at Attn: Purchasing Agent
Collection of Ambulance Service Receivables/RFP #2484
125 North Main Street, Room 354
Memphis, TN 38103
E-Mail Inquires: pamela.kiestler@memphistn.gov**

REQUEST FOR PROPOSALS

Collection of Ambulance Service Receivables

The City of Memphis Division of Fire Services, hereinafter referred to as "City", will contract with a firm interested in the actual purchase of ambulatory receivables and/or specializing in the collection of third-party ambulance service receivables. The successful bidder will be expected to begin performance of the tasks mandated by the contract on the date the agreement is signed.

Interested parties are invited to submit a proposal and credentials outlining their qualifications to provide these services to the Emergency Medical Services department of a major urban municipality.

The proposal should clearly define how the firm plans to satisfy the requirements of the City of Memphis. This written Request for Proposal (RFP) states the scope of those requirements and specifies the general rules for preparing the proposal. The terms "vendor" and "bidder" are used interchangeably to refer to the proposing party.

General Information

A copy of this Request for Proposal will be posted on the City's website: www.memphistn.gov under Government News. Bidders will prepare proposals in compliance with all of the instructions outlined in this RFP, completing the requested information and returning the completed document to the City by the deadline. Bidders will submit an original copy of the proposal, plus three copies.

Proposal Submittal

Bidders are to submit an original and three (3) copies of their proposal, in accordance with the instructions in the RFP notice, to:

City of Memphis
Purchasing Department
125 North Main Street, Room 354
Memphis, TN 38103

Since all proposals and documents generated by the Bidder pursuant to this RFP become the property of the City of Memphis, the Bidder agrees that it will not, without written approval by the City, disclose publicly said records.

Proposal Costs

All costs incurred by the vendor in preparing the proposal, or costs incurred in any other manner by the vendor in responding to this proposal will be solely the responsibility of the vendor. All material and documents submitted by the vendors in response to this RFP become the property of the City of Memphis and will not be returned to the vendor.

The City assumes no obligation as a result of the issuance of this RFP, the preparation or submission of a proposal by a Bidder, the evaluation of an accepted proposal, or the selection of finalists. The City is not bound until a written contract for the performance of the work is executed by both parties.

Successful Bidder Responsibility

The successful bidder shall assume responsibility for meeting all requirements agreed to in response to this RFP. Further, the City will consider the selected Bidder to be the sole point of contact with regard to contractual matters, including the performance of services and the payment of any and all charges resulting from contract obligations. Upon contract award, the selected Bidder will be directly responsible for all of its subcontractors, if any. Selected Bidder will designate a Project Manager who will serve as the point of contact for the City, and to manage system implementation.

RFP Terms and Conditions

All inquiries regarding this RFP shall be forwarded to:
City of Memphis
2714 Union Avenue Extended, Suite 350
Memphis, TN 38112
Attn: Chief Pam Kiestler
pamela.kestler@memphistn.gov

Proposal Submission

To be considered for selection, an original and three copies of the complete proposal shall be delivered **before June 18, 2010, at 2:00 pm, Central Standard Time (CST)** to:

**City of Memphis
Purchasing Department
125 N. Main, Room 354
Memphis, TN 38103
Attn: Jerome Smith, Purchasing Agent**

RFP Inquiries

Bidders shall submit all questions or concerns related to this RFP by fax or by e-mail to the address as specified above. No oral requests for clarification or information will be accepted.

The Bidder shall identify all e-mail inquiries in the subject line as "RFP Inquiry" and shall submit questions no later than the deadline stipulated in the Proposal's Schedule of Events. To ensure the fair and consistent distribution of information, all questions will be answered by a Question-and-Answer (Q&A) document, which will be posted on the City's website (www.memphistn.gov). No individual answers will be given.

The only official answer or position of the City will be the one posted via the City's website. Any revisions to the solicitation will be made only by an addendum issued by the City, which will be posted on the City's website: (www.memphistn.gov).

Amendments to RFP

The City reserves the right to re-issue or change any portion of this RFP, in its sole discretion. In the event it is necessary to revise any part of the RFP after the initial issue date, the City will make modifications by issuing a written amendment, which will be posted on the City's website: (www.memphistn.gov).

Withdrawing RFP

The City reserves the right to withdraw this solicitation at any time prior to making an award based on this solicitation.

Preparation and Presentation Costs

The Bidder shall bear the total costs for any and all appearances and the costs associated with preparing the proposal or responding to the RFP. The City shall not, in any event, be liable for any expenses incurred by Offerors in the preparation and/or submission of the proposals. Proposals shall not include any such expenses as part of the proposed budget.

Ambiguity, Conflict, or other Errors in the RFP

If a Bidder discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify, in writing via fax or e-mail, the City of such error request modification or clarification of the document. The Bidder shall include the RFP number, page number and the applicable paragraph title. The City will issue/post any revisions to the RFP on the City's website (www.memphistn.gov). The Bidder is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal or any ambiguity, conflict, discrepancy, etc. shall be waived.

Failed Competition

The City reserves the right to reject any or all proposals which are not responsive to the specifications of this Request for Proposal (RFP). Competitive negotiation requires that at least two responsive proposals for the same scope of work and service area be received in response to the RFP. A competition is considered failed if only one responsive proposal is received. If a competition has been declared failed, the City then has the option to reopen the procurement or enter into a non-competitive procurement.

Withdrawing or Amending a Proposal

At any time prior to the scheduled deadline for receipt of proposals, the Bidder may withdraw or amend its proposal by submitting a written request from the authorized representative whose name and signature appears on the proposal. A written request to withdraw or amend the proposal must be submitted in writing to:

Jerome Smith, Purchasing Agent
City of Memphis Purchasing Department
125 N. Main Rm. 354
Memphis, TN 38103.

Acceptance/Rejection of Proposals: The City reserves the right to accept or reject, in whole or in part, any or all proposals submitted. The City shall reject the proposal of any Bidder that is determined to be non-responsive.

Informalities/Minor Irregularities

The City reserves the right to waive minor irregularities or informalities in a Bidder's proposal when the City determines that it will be in City's best interest to do so. Any such waiver shall not modify any remaining RFP specifications or excuse the Bidder from full compliance with the RFP specifications and other contract requirements if the Bidder is awarded the contract.

Oral Presentations

Bidders may be required to give an oral presentation of their proposal to City Representatives for the purpose of clarification to assure the City's full understanding of the proposal. Oral presentations are an option of the City, at the City's sole discretion; however, no proposal may be altered or enhanced during an oral presentation.

Bidder indebted to the City

No contract will be awarded to any organization which, in the City's sole discretion, is in arrears to the City of Memphis upon any debt or contract, or which is a defaulter as surety or otherwise under any obligations to the City of Memphis, or which has failed to perform faithfully on any previous contract with the City of Memphis.

Validity of Proposals

All proposals shall be valid for a minimum period of 120 days from the opening date of the RFP.

Compliance with the RFP

The submission of a proposal shall be taken as prima facie evidence that the Bidder has familiarized itself with the contents of the RFP and with these terms and conditions, in particular. The failure or omission by the Bidder to receive or examine this RFP shall in no way relieve the Bidder of any obligation with respect to its submission or of any term or condition of this RFP and may result in disqualification. In order to be deemed responsive, Bidders must provide responses to address all items in the RFP.

Lengthy Proposals

The City discourages overly lengthy and costly proposals; however, in order for the City to evaluate proposals fairly and completely, Bidders should follow the format set out herein and provide all information requested. Proposals shall be as thorough and detailed as possible, but prepared simply providing a straightforward, concise description of the Bidder's capabilities to provide the services and satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

Local Preference

This procurement may be subject to the requirements of Ordinance No. 5114 which establishes a local preference for businesses located within the City of Memphis. A copy of the Memphis and Shelby County Tennessee Business Tax Receipt shall accompany the bid for consideration of this ordinance.

Living Wage

This procurement may be subject to Ordinance No. 5185 which establishes a minimum wage for employees of businesses providing services for the City of Memphis. The Living Wage Ordinance and any amendments thereto, can be accessed on the City's website (www.memphistn.gov). Once on the City's homepage, click on the "Business" link, and then click on the "Doing Business with the City" link. A link to the Ordinance will be accessible on the top right side under the section "Links."

Contract Award

The City may fund all or any part of a proposal, and the City will only accept proposals for the services requested. The proposal submitted in response to this solicitation is not a legally binding document; however, the contract, which will be based on information provided in the proposal, becomes legally binding once all parties have signed it. Any contract resulting from this RFP shall be subject to the City of Memphis General Terms and Conditions set forth in this solicitation. The successful Contractor shall be required to execute the contract originated by the City of Memphis and satisfy all contract requirements as specified by the City. One or more contracts may be awarded under

this RFP, and any contract awards and amounts are subject to the availability and appropriation of funds.

Insurance

If awarded a contract pursuant to this RFP, the Contractor will be required to have and maintain the insurance specified in the RFP. The successful Contractor will be required to furnish the City, on or before the effective date of the Agreement, a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required is in effect. All insurance companies must be acceptable to the City of Memphis and be licensed in the State of Tennessee.

Insurance Requirements

A. The Contractor shall not commence any work under this agreement until it has obtained and caused its subcontractors to procure and keep in force all insurance required hereunder. The Contractor shall require all subcontractors to carry insurance as outlined below, in case the subcontractor(s) are not protected by the policies carried by the Contractor. The Contractor shall furnish the City's Risk Manager a Certificate of Insurance and/or policies, upon request, attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the State of Tennessee.

B. If any of the insurance requirements are non-renewed at the expiration dates of any policy, payment to the Contractor may be withheld until those requirements have been met, or at the option of the City, the City may pay the renewal premiums and withhold such payments from any monies due the Contractor.

C. The Contractor shall maintain, at its expense, at minimum, the following insurance coverage during the life of the Agreement:

1. WORKERS COMPENSATION Employer's Liability in accordance with the statutory requirements and limits of the State of Tennessee and shall require all subcontractors to do likewise.

\$100,000 Each Accident

\$500,000 Disease – Policy Limit

\$100,000 Disease – Each Employee

2. AUTOMOBILE LIABILITY covering owned, non-owned and hired vehicles with minimum limits of: \$1,000,000 Each Occurrence – Combined Single Limits

3. The Contractor shall be responsible for maintaining any and all PROPERTY

INSURANCE on their own equipment and shall require all subcontractors to do likewise.

4. COMMERCIAL GENERAL LIABILITY: Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage:

| | |
|---------------------------------|---|
| General Aggregate | \$1,000,000 |
| Products - Completed Operations | \$1,000,000 |
| Personal & Advertising | \$1,000,000 |
| Each Occurrence | \$1,000,000 (Bodily Injury & Property Damage) |
| Fire Damage any One Fire | \$50,000 |
| Medical Expense any one Person | \$5,000 |

D. Each certificate or policy shall require and state in writing the following clauses:

1. "Thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the City of Memphis Risk Manager" by registered mail, return receipt requested to the following address:

City of Memphis
Attn: Risk Management
2714 Union Avenue Extended, Suite 200
Memphis, TN 38112

2. **"The City of Memphis, its officials, agents, employees and representatives shall be named as Additional Insured on all liability policies." The additional insured endorsements shall be attached to the Certificate of Insurance"**

Rejection of Proposals

LATE PROPOSALS WILL BE CONSIDERED NON-CONFORMING AND WILL NOT BE ACCEPTED.

Incomplete proposals will not be considered for selection if the omission(s) are determined, in the City's sole discretion, to be significant. Each proposal shall be submitted in a sealed envelope or package. Bidders shall note "Request for Proposal enclosed" on the outside of the envelope or package. Proposals submitted and accepted by the City become the property of the City of Memphis and will not be returned. **The City has the right to reject any or all proposals.** The proposal must set forth accurate and complete information as required in this RFP. Unclear, incomplete, and/or inaccurate documentation may not be considered for a contract award. Falsification of any information may result in disqualification.

Pre-Bid Conference

A **Mandatory Pre-Bid Conference** is scheduled for May 25, 2010 at 09:00 am central standard time at 2714 Union Avenue Extended, Suite 350, Memphis, TN 38112. For additional information, please email pamela.kiestler@memphistn.gov .

Anticipated Schedule of Events

Solicitation IssuedMay 11, 2010
Written Questions Due at the City May 21, 2010
Mandatory Pre-Bid ConferenceMay 25, 2010 @ 0900 am cst
Written Q&A Responses Posted June 1, 2010
Proposal/Response Due at CityJune 18, 2010 @ 2:00pm cst]
Evaluation of Proposals/ResponsesJune 23, 2010
Notice of Intent to AwardJune 25, 2010

This timetable is for the information of submitting entities. Project restraints may cause these dates to change.

In no event shall the deadline for submission of the proposal be changed except by written modification by the City of Memphis Purchasing Department.

Minority and Women Business Enterprise Participation (M/WBE)

This project is subject to the requirements of the City of Memphis Ordinance #4388, which establishes the Minority and Women Business Enterprise Procurement Program. It is up to the Bidder to ensure that all requirements of this ordinance are met. The Ordinance may be accessed on the City's website at www.memphistn.gov under "[Doing Business](#)". The intent of the M/WBE Program is to increase the participation of M/WBEs in the City's purchasing activities. Toward achieving this objective, the M/WBE participation is defined as the dollar value of subcontracts awarded to certified minority and/or women business enterprises divided by the total proposed base bid amount.

Eligible M/WBE Firms

To qualify as an M/WBE firm, per the requirements of City of Memphis Ordinance #4388, a firm must be included on the City's list of certified M/WBE firms. If the Bidder is a certified M/WBE, then the participation goal for this solicitation shall be deemed met. One or a combination of several M/WBEs may be utilized to meet the established goal. A list of eligible firms may be obtained from the City's Contract Compliance Office listed below:

Carlee M. McCullough, Esq.
City of Memphis
Contract Compliance Office
125 North Main Street, Suite 440
Memphis, TN 38103
Phone: (901) 576-6210
Fax: (901) 576-6560
Email: carlee.mccullough@memphistn.gov

Proposal Structure

The proposal submitted in response to this RFP will be included as part of the final contract with the selected bidder, and may be amended during final negotiations. By submitting a proposal response, the bidder indicates their agreement to the specified terms and conditions presented in this RFP and any exceptions identified by them. In order to evenly evaluate each proposal, all Bidders must structure their proposals in the following manner:

Cover letter

Bidder must submit a one-page Cover Letter containing the name and address of the corporation or business submitting the proposal. Bidder must certify in the Cover Letter:

- a) Bidder's proposal is genuine and is not made in the interest of, or on the behalf of, any undisclosed person, firm, or corporation;
- b) Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid;
- c) Bidder has not induced or solicited any other person, firm, or corporation to refrain from proposing;
- d) Bidder has not sought by collusion to obtain any advantage over any other Bidder or over the City; and
- e) Bidder has reviewed and certifies compliance with the City of Memphis conflict of interest policy, as well as affirms that no member of the Bidder's firm is related to any City of Memphis employee who has decision-making or contracting responsibility as it relates to this solicitation.

The Cover Letter must contain the title and signature of a duly authorized officer who is empowered with the right to represent and bind the Bidder.

Table of Contents

A Table of Contents of the proposal material must follow the Cover Letter.

Proposal Requirements

Bidder shall provide a brief company description, history, and financial status. Bidder should also include the same information for each partner in the proposal. In addition, bidder shall submit the following information for evaluation:

- a) Firm name, address, phone number, and date established;
- b) Local responsible office and officer;
- c) Name of office principals, their experience and professional qualifications;
- d) Number of years company has actively participated in healthcare collection;
- e) Supply a list of references and/or a client list of organizations for which your firm has provided third party collections for health care services;

- f) Number of company employees - internationally, nationally, and locally;
- g) Supply a list of employees who will be devoted to servicing the City's account. Individual resumes of the lead members of your service team should also be supplied;
- h) Healthcare collections and accounts receivable software used to invoice patients and track payments against patient accounts. Describe the specific collection process and techniques which would be used to assist the City of Memphis in collecting accounts receivable due to the City of Memphis Division of Fire Service EMS;
- i) Describe any other aspect of collection capabilities of your firm which distinguishes you from other firms offering this service. Describe the ability to provide on line transfer of account information.
- k) Describe the expected method of compensation for these services. The City would expect to pay a percentage of net collection for the services provided. However, alternate methods of compensation may be accepted;
- l) Other general information, as determined by bidder.

Proposal Evaluation

In order to be selected for interview, the Bidder must meet the following minimum requirements:

- (a) A local office providing a sufficient number of employees dedicated solely to the City of Memphis ambulance receivables to reasonably perform the services mandated by this contract;
- (b) Lead members must possess a minimum of five years experience in collections for medically related service receivables;
- (c) Proof that the Bidder has a collection rate of at least 5% over the prior 24 months for majority of clients;
- (d) Ability to provide patient inquiry information and electronic transmission of data between Bidder's computer system and City of Memphis Division of Finance, Division of Fire Services Headquarters, Third Party Billing Agency, and others as assigned by Fire Administration;
- (e) Ability to electronically file insurance claims for Medicare, TNCare, and other private healthcare insurance companies or third party administrators as needed;
- (f) Provide three references as to prior service in which the bidder has performed EMS collection services and successfully transitioned from "paper-based" PCRs to an electronic field data collection system and reporting system for entities of similar or larger size within the five years immediately preceding the date of this RFP;
- (g) Ability to accept an XML file from the billing vendor as a means to obtain specified receivables that are being sent for collections;
- (h) Ability to provide all management reports hardcopy and/or electronically in spreadsheet format;

- (i) Outline expected method of compensation for services;
- (j) Any other state of the art initiatives the vendor may demonstrate which would provide the City of Memphis Division of Fire Services the best practices available for collecting receivables.

A MANDATORY PRE-BID CONFERENCE WILL BE HELD TUESDAY, MAY 25, 2010 AT EMS ADMINISTRATION, LOCATED @ 2714 UNION AVENUE EXTENDED, SUITE 350, MEMPHIS, TN 38112 @ 09:00A.M. PLEASE CONTACT CHIEF PAM KEISTLER @ 901-636-7570 OR DEPUTY FIRE CHIEF GARY LUDWIG @ 901-320-5464.

Financial Information

Bidder must provide most recent annual report or current audited financial statements covering the previous fiscal year.

Relevant Projects/References

Bidder must also describe relevant projects ("Relevant" is defined as services similar to that proposed for the City). Include names, addresses, and telephone numbers of references for each relevant project.

Executive Summary

Bidder must provide a general overview of their solution to this RFP. Distinctive features of the proposed system should also be presented.

Technical Summary

The City of Memphis Division of Fire Services is dedicated to the use of "state of the art" technology for on line transmission of data. Bidders are encouraged to provide detailed descriptions within their proposal of any hardware or software that will be utilized and/or interface with the current EMS Billing company, to include the ability to accept XML files for the transfer of accounts from the Billing vendor the Collections vendor. This description should indicate how their firm will assist in reaching our revenue goals.

Bidder must provide a complete and clearly stated description of the system. At a minimum, this section must include the following:

- a) Complete description of Bidder's approach to the City's requirements;
- b) Detailed technical and functional discussion of the system;
- c) Optional or alternative proposals.

The City requests supporting data to be submitted with the proposal regarding aspects of the system as stated in this scope of services and in the RFP. Failure to provide requested information may result in a non-responsive proposal.

HIPAA Privacy Plan, Compliance Plan, Business Associate Assurances and Identity Theft Prevention Program

The successful Bidder shall execute a Business Associate Agreement that provides satisfactory assurances under the provisions of the HIPAA privacy regulations and assures that the successful Bidder will safeguard the patient's and City's protected health information in accordance with the standards set forth in applicable privacy laws.

The successful Bidder shall have a Privacy Plan in place that complies with all components required by HIPAA, or other applicable laws.

The successful Bidder shall comply with other provisions of HIPAA, including the transaction set requirements and security provisions, as they are required.

Bidders shall provide a copy of its proposed HIPAA Privacy Plan and its OIG/Ambulance Collections Compliance Plan that will be instituted as a means of adhering to federal and state healthcare program rules and regulations in the Technical Proposal.

The successful Bidder shall comply with the "Red Flag Rules" adopted by the FTC by implementing and administering a written Identity Theft and Prevention Program that will identify identity theft risks and establish a written program regarding same.

The successful Bidder shall comply with said Plans and Programs at the time of contract execution and shall update said Plans and Programs throughout the life of the contract whenever required to do so by the applicable laws regulating said Plans and Programs.

Statistical Analysis & Reporting Specifications

The successful firm shall seek to obtain reimbursement for the charges generated by the City's Emergency Medical Services. Reimbursement shall be pursued through the billing of patients, property owners, third-party payors (i.e., public or private healthcare insurance carriers) etc., for services rendered.

The successful firm shall provide on-going consultation to assist the City on matters related to the collection of the above charges, to include advice on current developments in Medicare and Medicaid reimbursements, private healthcare insurance reimbursements, and claims management techniques.

The successful firm shall provide monthly management reports required to manage the accounts receivable generated by the Emergency Medical Services. That information

shall include, but not be limited to, the following reports required on a monthly basis:

- a) A report of gross and net charges for the current month, gross and net charges for the same month during the prior year, and a 12-month average of gross and net charges;
- b) A report of gross and net collections for the current month, gross and net collections for the same month during the prior year, and a 12-month average of gross and net collections;
- c) A report of the net collection percentage for the current month, net collection percentage for the same month during the prior year, and a 12-month average of the net collection percentage;
- d) An accounts receivable aging report;
- e) An analysis of gross charges and gross receipts by pay classification (i.e., self-pay, commercial insurance, Medicare, etc.);
- f) An analysis of bad debts written off;
- g) A reconciliation of beginning and ending accounts receivable balances for the month.

Provide samples of reports currently in use that would be used to comply with this section. Please provide any necessary documentation on how these reports would be modified, if necessary, to meet the needs of the City of Memphis as described in this RFP.

Evaluation & Award Criteria

The following five (5) theme topics will be utilized in the evaluation of vendors, thereby enabling the City to select the best company to provide service for the City of Memphis Division of Fire Services.

The Division of Fire Services Director will choose a Selection Committee for the selection/evaluation of vendors throughout the bid process. The Selection Committee will utilize the listed five (5) theme topics equaling 100% for the choosing of a vendor.

Selected committee members will rank individual vendors for each theme covering all subtopics. The weight rating area (percentage) for each individual theme will be multiplied by each of the selected raters giving a total weighted rating for each theme.

Individual committee members will add the five (5) theme topics for each vendor giving a total rating for each vendor's presentation.

A totaled rating from each of the selected committee members will be documented and added together for a final numerical score. The vendor with the highest numerical score will be recommended for contract award.

THEME TOPICS

Ability To Provide The Best Service / Practice (25%)

- Process and Methodology
- Experience relative to the City of Memphis
- Volume of current accounts
- Support services

Pricing (10%)

- Method of Compensation for Services
- Total Cost

Financial Analysis (25%)

- Dollar Amount of Accounts
- Age of Open Accounts
- Total Collection Ratio (Percentage)
- Analysis of Charges, Receipts and Debts
- Reconciliation of beginning and ending account balances-monthly

Staffing For Memphis Office (15%)

- Key Personnel Years of Experience
- Staff Numbers and Skill Levels
- Employee Turnover Ratio
- HIPAA Compliance
- "Red Flag Rules" Compliance

Level of Technology Support (25%)

- Technology Support (Internal or Contract)
- Billing Application
- Local Access Networking

Following the submission of RFP's, the submissions are to be examined by the selection committee appointed by the Director of Fire Services. The committee will interview representatives of each responding party at the conclusion of the review of the written materials. The successful bidder will be notified in written form by U.S. Mail.

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days after the intent to award announcement at the following address: City of Memphis, Attn: Purchasing Agent, 125 N. Main, Room 354; Memphis, Tennessee 38103. The Notice will be posted on the City's website and outside Council Chambers, located on the lobby floor of City Hall. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

Terms and Conditions

RFP TERMS

REQUEST FOR PROPOSAL TERMS

The City of Memphis seeks proposals from firms who have the expertise to provide Collection of Ambulance Service Receivables in accordance with this RFP document. This is a Request for Proposal that may be modified by the City in the selection process.

THE CITY OF MEMPHIS ENCOURAGES THE PARTICIPATION OF SMALL AND MINORITY BUSINESSES IN THE PURCHASING PROCESS.

The City of Memphis is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age or handicap status in employment or in the provision of services.

This procurement may be subject to the requirements of Ordinance No. 5114 which establishes a local preference for local businesses located within the City of Memphis. A copy of your current Memphis and Shelby County Tennessee Business Tax Receipt must accompany the proposal for consideration of this ordinance.

The contract may be subject to the requirements of Ordinance No. 5185, as amended, which establishes a minimum wage for employees of businesses receiving a service or service-related contract from the City of Memphis. The Living Wage ordinance and any amendments thereto, can be accessed on the City's website (www.memphistn.gov). Once on the City's homepage, click on the "Business" link, and then click on the "Doing Business with the City" link. A link to the ordinance will be accessible on the top right side under the section "Links".

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the intent to award announcement at the following address: City of Memphis Purchasing Agent, 125 North Main, Room 354; Memphis, Tennessee 38103. Notice will be posted on the City's website and outside Council Chambers, located on the lobby floor of City Hall. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

Only proposals submitted on the provided form(s) with no changes, additions or deletions to the terms and conditions will be considered. Proposals containing terms and conditions other than those contained herein may be considered nonconforming.

No objections with regard to the application, meaning, or interpretation of the specifications will be considered after the opening of the subject proposals. If there are questions or concerns regarding any part of plans, terms, specifications or other proposed documents, a written request for interpretation thereof may be submitted to the City Purchasing Agent prior to the deadline date. The organization submitting the request shall be responsible for the prompt delivery of the request. Any interpretation in response to the written request will be made only by addendum duly issued, and a copy of such addendum will be mailed or delivered to each organization receiving a set of such documents and/or posted on the City's website. The City of Memphis will not be responsible for any other explanation or interpretation of the proposed documents. By submission of its proposal, a vendor shall be deemed to have understood fully the contents and meaning of the RFP.

All proposals must be signed by an authorized representative of your organization. Unsigned proposals will be considered nonconforming.

Any contract resulting from the proposals received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee without regard to conflicts of laws principles.

By order of the Mayor of the City of Memphis, Tennessee.

A C WHARTON, JR., MAYOR

Jerome Smith, City Purchasing Agent

Published in The Daily News on May 18, 19, 2010 2 Copies

INSTRUCTIONS TO PROPOSERS

Proposers shall submit their signed proposal in a sealed envelope INDICATING ON THE OUTSIDE: THE COMPANY NAME and THE REQUEST FOR PROPOSAL NUMBER.

Proposers must comply with all applicable licensing requirements. Pursuant to the City of Memphis Charter, Article 71, Section 777 et seq., it is unlawful to operate a business within the limits of the city of Memphis without possessing a Memphis and Shelby County business license, excepting non-profit organizations that qualify as tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Upon award notification and prior to the City issuing a properly executed purchase order or entering into a contract with the vendor, the successful vendor, whose principal business address is located within the limits of the city of Memphis, will be required to submit, along with the required insurance and other required documentation, a copy of (1) the tax-exempt ruling or determination letter from the Internal Revenue Services; or (2) its current Memphis and Shelby County Business Tax Receipt/License.

Issuance of this RFP does not obligate the City to contract, in whole or in part, for services specified herein. The City of Memphis reserves the right to cancel this solicitation, in whole or in part, or to reject, in whole or in part, any and all proposals. Cancellation of this RFP or any subsequent award will be posted on the City's website: www.memphistn.gov under the section titled "Government News."

Any firm receiving a mailed solicitation on the above subject and not bidding will be electronically removed from the City's mailing list used for the above-referenced subject after 3 consecutive non-responses or no bids.

For additional information concerning this solicitation, please contact: Chief Pamela Kiestler at pamela.kestler@memphistn.gov

This solicitation shall be in accordance with the City of Memphis Purchasing Policies and Procedures, which may be amended from time to time.

All materials submitted pursuant to this RFP shall become the property of the City of Memphis.

To the extent permitted by law, all proposals submitted in response to this RFP shall be kept confidential until the proposals have been evaluated and the intent to award is announced. Until the intent to award is announced, no information regarding any proposal will be released to anyone, except members of the Evaluation Committee who are responsible for evaluating the proposals and other appropriate City staff. All information provided by the Vendor in response to this RFP will be considered by the Evaluation Committee in evaluating the proposal and making an award recommendation to the City.

The Mayor of the City of Memphis is the only individual who can legally sign contracts on behalf of the City. Costs chargeable to the proposed contract shall not be incurred before receipt of a fully executed contract.

Exhibit A”

“Proposed Contract” SERVICE AGREEMENT

SERVICE AGREEMENT FOR

This Agreement is made and entered into as of _____ by and between _____, hereinafter called the "Contractor" and the City of Memphis, a municipal corporation of the State of Tennessee, hereinafter called the "City":

WITNESSETH

WHEREAS, the City has the need for _____; and

WHEREAS, the Contractor has the knowledge and expertise to provide such services; and

WHEREAS, the parties desire to enter into a contract setting forth the terms and conditions under which the Contractor shall provide said services.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

SCOPE OF SERVICES

SCOPE OF SERVICES. The Services to be provided in connection with this Agreement shall include, but not be limited to, those items listed in the Scope of Work, which is attached hereto and incorporated herein as Exhibit A (the "Services").

TERM

This Agreement shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the City in accordance with applicable ordinances, laws and regulations.

The Initial Term of this Agreement shall commence beginning _____ and shall end on _____ ("Initial Term") subject to the availability of funds to finance the same and the successful operation of the program.

The City shall have the option to extend the Initial Term for _____ additional one-year periods (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council. Unless the City gives the Contractor written notice of the City's intention not to exercise an option period at least _____ days prior to the expiration of the then current period, the option will be automatically exercised, and the applicable Option Period will commence immediately upon conclusion of the preceding Initial Term or Option Period, as applicable. The Initial Term and the exercised Option periods are collectively referred to hereinafter as the "Term."

PAYMENT TERMS AND CONDITIONS

INVOICES. The Contractor shall submit original invoices, or copies of original invoices certified as such by the Contractor, on the Contractor's letterhead and in form and substance acceptable by the City and with all necessary supporting documentation, to the City. The invoice shall describe the services, shall reflect any applicable terms of payment, and must show the contract number to which it relates. Unless the contract number is shown on the invoice, it may be returned to the Contractor. Invoices shall be submitted to: _____, _____, Memphis, TN _____, Attn: _____

COMPENSATION. Unless the City has good faith and reasonable objections to the Contractor's invoice(s), the City shall compensate the Contractor, based on invoices submitted by the Contractor, the sum total not to exceed _____ (USD) (the "Fee") during the term of the Agreement, which shall include all reimbursable expenses.

The City shall use its best efforts to remit payment based on the Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by the City. The City is not obligated to pay, and may withhold from payment, any amounts the City has in dispute with the Contractor based on the Contractor's non-performance, unsatisfactory performance or negligent performance of any services hereunder.

PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK. The payment of an invoice shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein, and the City's payment shall not relieve the Contractor from its obligation to replace or correct any work that does not conform to this Agreement, even if the unsatisfactory character of such work may have been apparent or detected at the time such payment was made. Work, data or components that do not conform to the requirements of this Agreement shall be rejected by the City and replaced by the Contractor, without delay or additional cost to the City.

If the Contractor receives payment from the City for a service or reimbursement that is later disallowed or rejected by the City or another governmental entity on the basis of audit or monitoring, the Contractor shall promptly refund the disallowed amount to the City upon the City's request. At its option, the City may offset the amount disallowed from any payment due to the Contractor under this Agreement or any other agreement.

FINAL CONTRACT INVOICE. The Contractor shall submit to the City a final contract invoice within 45 calendar days from the termination date of the contract, for any services provided pursuant to this Agreement. The Contractor further acknowledges and agrees the City will not be responsible for any Contractor invoices, pertaining to this Agreement, submitted to the City after the final contract invoice. The Contractor shall close out its accounting records at the end of the Agreement period in such a manner that reimbursable expenditures and revenue collections are NOT carried forward.

GENERAL TERMS AND CONDITIONS

INCORPORATION OF WHEREAS CLAUSES. The foregoing whereas clauses are hereby incorporated into this Agreement and made a part hereof.

REPORTS. Upon request, the Contractor shall prepare and submit reports of its activities, funded under this agreement, to the originating department of the City. The reports shall include an itemization of the use of the City's funds, inclusive of specific services delivered by the Contractor. Any such reports provided to the City shall be prepared with the understanding that the City may make such reports available to the public. The City shall have the right to withhold future disbursement of funds under this Agreement and any future Agreements until the requirements of this provision have been met.

ENTIRE AGREEMENT. This Agreement constitutes the full and final understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement.

STANDARD OF PERFORMANCE. All services by the Contractor shall be performed in compliance with the specified requirements, in a manner satisfactory to the City, and in accordance with the generally accepted business practices and procedures of the City and pursuant to the governing rules and regulations of the industry, based on the type of services performed hereunder.

HEADINGS. Titles and headings used herein are for the convenience of reference only and shall be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

MODIFICATION AND AMENDMENT. Any changes, modifications or amendments to this Agreement shall not be considered agreed to or binding on the other party, unless such modification(s) have been agreed to in writing and approved by the appropriate City officials in accordance with applicable laws and regulations.

CONFIDENTIALITY. While performing work under this Agreement, the Contractor may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to the City or its

officials or employees. Such information shall include materials considered to be confidential information as a matter of law (e.g., personnel records), and shall also include (i) all materials in any form developed or created by the City related to funding and financial and business information; (ii) all information owned, possessed or used by the Contractor, which is communicated to, learned, developed or otherwise acquired by the Contractor in the performance of the Services for the City; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that the Contractor has been advised by the City is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in the Contractor's possession prior to disclosure by the City; (ii) information generally available to the public or that becomes available to the public through a source other than the City, or (iii) information that was rightfully obtained by the Contractor from a third party who is under no obligation of confidentiality to the City with respect to such information. The Contractor agrees that it will accept and hold confidential information obtained from the City in confidence at all times during and after termination of this Agreement. The Contractor shall neither use nor disclose or communicate such information, except as provided in this Agreement or as required by law, without the prior written permission of the City.

The Contractor acknowledges and agrees that a breach by the Contractor of this section will cause the City irreparable injury and damage; therefore, the Contractor expressly agrees that the City shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement. The Contractor agrees that it will disclose confidential information only to those employees who have a right to know, and shall require its employees, agents, and subcontractors to comply with the requirements of this provision and the requirements of the provisions titled "Public Statements" and "Rights in Data."

PUBLIC STATEMENTS. The Contractor shall not make any announcement, release any information, or authorize or participate in any interview concerning this Agreement and the Services, without first obtaining written consent from the City. The Contractor shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.

RIGHTS IN DATA. The Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type produced under this Agreement, whether or not the same is accepted or rejected by the City, shall remain the property of the City and shall not be published by the Contractor or any other party without the express prior written consent of the City. In implementing the foregoing, the Contractor hereby grants and assigns to the City all rights and claims of whatever nature, whether now or hereafter, arising in and to any and all of such reports, studies, plans, models, drawings, specifications, and other information or data and shall cooperate fully with the City in any steps the City may take to obtain copyrights, trademark or like protections with respect thereto. The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all documents from the Contractor to the City upon the Contractor's delivery of such documents and/or information to the City or upon completion of the Project, whichever occurs first. The Contractor shall not construe such transfer as a grant for usage nor can the Contractor revoke it.

EMPLOYMENT OF CITY WORKERS. The Contractor shall not engage, on a full, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of the City.

CONTRACTOR'S PERSONNEL. The Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all work performed under this Agreement shall be supervised by the Contractor. The Contractor further certifies that all of its employees assigned to perform any work hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Contractor who, in the opinion of the City, is incompetent, whose conduct becomes detrimental to the work, or whom the City deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the City's request. Upon such request, the Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. The City shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, Federal and local taxes, or other compensation, benefits or taxes for any personnel provided on behalf of the Contractor. In addition, the Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

INDEPENDENT CONTRACTORS. Nothing in this Agreement shall be deemed or construed to represent that the Contractor, or any of the Contractor's employees or agents, are the agents, representatives, or employees of the City. The Contractor acknowledges that it is an independent contractor over the details and means for performing the services hereunder. Anything in this Agreement which may appear to give the City the right to direct the Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over the Contractor is solely for purposes of compliance with local, state and federal regulations and means the Contractor will follow the desires of the City only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the Contractor that neither it nor its employees or agents shall hold itself out contrary to the terms of this paragraph, and the City shall not be liable for any representation, act or omission of the Contractor contrary to the provisions hereof..

TERMINATION

1. It shall be cause for the immediate termination of this Agreement if, after its execution, the City determines that either:

- a. the Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
- b. the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the City's consent or approval; or
- c. the Contractor has filed bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Contractor's assets; or

2. The City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to the Contractor of the City's intention to terminate the Agreement as a result of Contractor's failure to provide the services specified under this Agreement or in violation(s) of any of the terms herein, and the Contractor has failed to cure such breach within _____ business days of such notice. The City may reject the entire services and cancel this Agreement for any services rendered or to be rendered hereunder. In the event of any such rejection/termination, the City shall, at the City's option, have the right to obtain like services elsewhere or to take over the work and prosecute the same to completion, both at the Contractor's expense; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, etc. as may be on the site of the work and necessary therefore. The Contractor shall be liable to the City for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorneys' fees and court costs.

3. Notwithstanding the foregoing or any section herein to the contrary, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor, for the purpose of setoff, until such time as the exact amount of damages due the City from the Contractor is determined.

4. The City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving _____ days prior written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation, as determined by the City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no event shall the City be liable to the Contractor for expenses incurred after the termination date. All services completed by the Contractor prior to the Termination Date shall be documented and all tangible work documents shall be transferred to the City prior to payment for services rendered, and shall become the sole property of the City. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.

5. The Contractor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within thirty (30) days of termination of this Agreement. Upon reasonable request, the City reserves the right to obtain such information prior to the termination of this Agreement.

COMPENSATION FOR CORRECTIONS. No compensation shall be due or payable to the Contractor pursuant to this Agreement for any of the Contractor's services performed by the Contractor in connection with the City effecting corrections to the services, when such corrections are required as a direct result of negligence by the

Contractor to properly fulfill any of its obligations herein.

CITY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF. If evidence is produced before the final settlement of all or any balances that the Contractor has failed to pay laborers employed on his work or failed to pay for materials used therein, or if the City has reason to suspect the same, the City may withhold such balances and upon evidence satisfactory to the City as to the amount due for such labor and materials, the City, acting as the agent of the Contractor, may settle and pay for the same and charge the amounts to the Contractor and deduct the same from the said balance or balances.

REMEDIES CUMULATIVE. All remedies available to the City provided herein are cumulative and shall be in addition to all other rights and remedies provided by law. The termination, expiration, or suspension of this Agreement shall not limit the City from pursuing other remedies available at law or in equity.

SUBCONTRACTING, ASSIGNMENT or TRANSFER. The Contractor shall not subcontract, assign, delegate or transfer all or part of its rights, responsibilities, or interest under this Agreement without the prior written consent of the City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by the City. No subcontracting, assignment, delegation or transfer shall relieve the Contractor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of the Contractor's obligations to its transferors or subcontractors. Upon request of the City, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the transfer.

If granted approval to subcontract, the Contractor shall not subcontract more than _____% of the work required hereunder. The computation for percentages will be based on monetary values.

CONFLICT OF INTEREST. Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations.

The Contractor covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer, official, agent or employee of the City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the City shall have the right to recover or withhold the full amount of such gratuities.

COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

GENERAL COMPLIANCE WITH LAWS. The Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses shall be made available to the City, upon request.

The Contractor is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to the City of Memphis Living Wage Ordinance, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). The Contractor shall promptly notify the City of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

NON-DISCRIMINATION. The Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the Contractor's employment practices on the grounds of

handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event the Contractor fails to comply with the City's non-discrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the City.

The City reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The Contractor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

SEVERABILITY. If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible.

NO WAIVER OF CONTRACTUAL RIGHT. No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto. No delay or failure of the City to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver or relinquishment of the City's right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto.

SUBJECT TO FUNDING. This Agreement is subject to availability and annual appropriation of funds by the Memphis City Council. In the event sufficient funds for this Agreement are not appropriated by the Memphis City Council for any of its fiscal period during the term hereof, then the City shall immediately terminate this Agreement upon written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount.

CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS

ENTERPRISE. The Contractor shall take affirmative action to ensure that Small and Minority Businesses, which have been certified by the City, are utilized when possible as sources of supplies, equipment, construction and services, and shall, in addition, take similar appropriate affirmative action in support of Women's Business Enterprises.

PUBLIC RECORDS. Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the Contractor, the Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act.

ORGANIZATION STATUS AND AUTHORITY. The Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

The execution, delivery and performance of this Agreement by the Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party, or by which the Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement represents that: he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

WARRANTY. The Contractor warrants to the City that all goods/work shall be free from defects in design and faulty or improper workmanship and shall be in strict compliance with the terms of this Agreement. This warranty shall be effective for a period of not less than one year from the date of acceptance by the City of such goods and/or

services as satisfactorily complete, and shall be in addition to all other warranties, expressed, implied or statutory.

RECORDS AND AUDITS. The Contractor shall make and keep as the same accrue, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. The Contractor shall retain such records, and shall make available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of three (3) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required three-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to the City upon request.

Upon reasonable notice, the Contractor shall permit the City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

DISPUTE RESOLUTION. In the event of any dispute(s), controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate.

Any dispute concerning a question of fact in connection with this Agreement between the Contractor and the City shall be referred to the Mayor, City Attorney, Purchasing Agent or a duly authorized representative, whose decision regarding same shall be final.

FORCE MAJEURE. The City shall not be deemed in default hereunder, nor shall the City be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause.

SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

NOTICES. All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed via certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery, on the date of delivery; (ii) if by fax, on the day the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery via U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein:

To the CITY:

City of Memphis _____

Memphis, TN _____

Attn: _____

Fax: _____

With copy, if requested,

to:

City Attorney

125 N. Main, Room 336

Memphis, TN 38103

To the CONTRACTOR:

Memphis, TN _____

Attn: _____

Fax: _____

CITY LIABILITY. The City shall have no liability except as specifically provided in this Agreement.

INDEMNIFICATION

The Contractor shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees from and against any and all suits, claims, liabilities, damages (consequential or otherwise), or losses brought for bodily injury or damage to property (including attorneys' fees) that arise or are alleged to have arisen as a result of any conduct, whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Agreement or in the performance of the services required hereunder, by the Contractor, its subcontractors, agents or employees, excepting those losses or damages directly caused solely by the acts, errors, or omissions of the City or any of its officers, agents or employees. This indemnification shall survive the expiration or termination of this Agreement.

The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, defend, save and hold harmless the City or its elected or appointed officials, officers, employees, agents, assigns, and instrumentalities as herein required.

The City reserves the right to appoint its own counsel regarding any matter defended hereunder. The Contractor acknowledges that the City has no obligation to provide legal counsel or defense to the Contractor, its employees or subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against the Contractor as a result of or relating to obligations under this agreement. The City shall have no obligation for the payment of any judgments or the settlement of any claims asserted against the Contractor or its subcontractors or employees as a result of or relating to the Contractor's obligations hereunder.

The Contractor shall immediately notify the City c/o City Attorney; 125 North Main, Suite 336; Memphis, TN 38103, of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

LIVING WAGE

This agreement is subject to Living Wage Ordinance #5185 as amended by Ordinance #5257 (effective July 1, 2008) that requires contractors who enter into a service contract with the City to pay employees who work under the service contract a living wage. The minimum hourly wage shall be at least \$10.27 per hour with health benefits for employees and their dependents or \$12.32 per hour without health benefits. The City will request all certified payrolls associated with this contract to be forwarded to the City Comptroller, c/o Dwayne A. Jones, Manager, Prevailing Wage Office, 125 N. Main Street, Room 1B-18, Memphis, TN 38103. Copies of the Ordinances are posted on the City of Memphis Website (www.memphistn.gov). Once on the City's homepage, click on the "Business" link, and then click on "Doing Business with the City" link. A link to the Ordinance will be on the top right side under the section "Links". Annual adjustments to the rates will be posted on the side for the next year in February.

GOVERNING LAW, JURISDICTION AND VENUE

The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

INSURANCE

A. The Contractor shall not commence any work under this agreement until it has obtained and caused its subcontractors to procure and keep in force all insurance required hereunder. The Contractor shall require all subcontractors to carry insurance as outlined below, in case the subcontractor(s) are not protected by the policies carried by the Contractor. The Contractor shall furnish the City's Risk Manager a Certificate of Insurance and/or policies, upon request, attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the State of Tennessee.

B. If any of the insurance requirements are non-renewed at the expiration dates of any policy, payment to the Contractor may be withheld until those requirements have been met, or at the option of the City, the City may pay the renewal premiums and withhold such payments from any monies due the Contractor.

C. The Contractor shall maintain, at its expense, at minimum, the following insurance coverage during the life of the Agreement:

1. WORKERS COMPENSATION Employer's Liability in accordance with the statutory requirements and limits of the State of Tennessee and shall require all subcontractors to do likewise.

\$100,000 Each Accident

\$500,000 Disease – Policy Limit

\$100,000 Disease – Each Employee

2. AUTOMOBILE LIABILITY covering owned, non-owned and hired vehicles with minimum limits of: \$1,000,000 Each Occurrence – Combined Single Limits

3. The Contractor shall be responsible for maintaining any and all PROPERTY INSURANCE on their own equipment and shall require all subcontractors to do likewise.

4. COMMERCIAL GENERAL LIABILITY: Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage:

| | |
|---------------------------------|---|
| General Aggregate | \$1,000,000 |
| Products - Completed Operations | \$1,000,000 |
| Personal & Advertising | \$1,000,000 |
| Each Occurrence | \$1,000,000 (Bodily Injury & Property Damage) |
| Fire Damage any One Fire | \$50,000 |
| Medical Expense any one Person | \$5,000 |

D. Each certificate or policy shall require and state in writing the following clauses:

1. "Thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the City of Memphis Risk Manager" by registered mail, return receipt requested to the following address:

City of Memphis
Attn: Risk Management
2714 Union Avenue Extended, Suite 200
Memphis, TN 38112

2. **"The City of Memphis, its officials, agents, employees and representatives shall be named as Additional Insured on all liability policies." The additional insured endorsements shall be attached to the Certificate of Insurance"**

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

CITY OF MEMPHIS

By: _____
AC Wharton, Jr., Mayor

By: _____
Title: Name: _____

Approved as to Form:

City Attorney

Attest:

Deputy Comptroller